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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/511,682

10/18/2004

Yoshiaki Miyota

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SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

EXAMINER

PRATT, HELEN F

ART UNIT

PAPER NUMBER

1761

MAIL DATE

DELIVERY MODE

08/14/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/511,682

Applicant(s)

MIYOTA ET AL.

Examiner

Helen F. Pratt

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1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Todd, Jr. (Todd) (5,296,249) in view of Ito et al. (EP0848955) and Maugle (WO98/34474)

Todd discloses a process of farming fish, using pelleted trout and salmon food made by extrusion which is coated with a mixture of fat, a carotenoid, and antioxidant, an emulsifier and oil (col. 16, lines 45-70, col. 18, lines 55-65). The antioxidant can be ascorbic acid with a particle size of less than about 38 microns in an amount of 0.001% by weight of the feed. Claim 12 differs from the reference in whether the pellets have

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been kneaded and shaped into a shaped product, which is dried, and in whether the vitamin C is stabilized. However, applicants' specification discloses that it is known to knead and extrude a fish meal under high pressure (page 2, lines 2nd para.) since the feed is in pellet form, it is seen to have been formed and dried. Stabilized V-C is disclosed by Ito et al. in a feed composition (abstract and Table 1, Table 2 and also lines 10-50 on that page and claims 1 and 2, 8, claim page, lines 5-10). Also, Maugle discloses the use of stabilized vitamin C in an aquaculture media (page 3, lines 10-26, page 4, lines 1-5). Maugle also discloses the use of brine shrimp, which have been enriched with ascorbyl 2-sulfate as food for other shrimp (page 15, lines 20-25, page 16, lines 1-20). Therefore, it would have been obvious to use the stabilized vitamin C of Ito et al. and Maugle in a coating for a feed since it is known that the stabilized vitamin C has been used in a feed as disclosed by Maugle for its known function of being stable to heat.

Nothing new is seen in the use of a heated kneader as in claim 13 or in drying a solid shaped product as in claim 14 at the temperature of claim 15 for particular amounts of time as in claim 16, since pelleting is known in the art (Todd (col. 16, lines 62-70). Therefore, it would have been obvious to use known kneaders, which are heated.

Claim 17 further requires that the V-C particles have a diameter of from 5 microns to 300 microns. Todd, Jr. discloses the use of particle sizes from 10 microns to less than 5 microns (col. 20, lines 1-35).

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Oil as in claim 18 is disclosed by Todd (abstract and col. 17, lines 40-50, col. 18, lines 56-65) and the V-C is dispersed in the fish oil (col. 17, lines 40-50).

Claim 20 further requires drying of the feed after being coated with the emulsion of vitamin C. and claim 21 requires drying at a particular temperature. However, nothing new is seen in drying any product, if the moisture content is too high. It is well known that dry products are much more shelf stable and it is well known to dry at temperatures that will not harm the required characteristics of a product. Therefore, it would have been obvious to dry a product to remove moisture and to dry at particular temperatures, which will not effect the labile characteristics of the product.

The particular amount of V-C will be in the product as in claim 22 since the claimed process has been shown. Claim 1 and 2, 3 further require that the vitamin is on the surface layer at a particular depth, and claims and claim 4 requires particular amounts as does claim 7. However the combined references disclose coating a fish food with vitamin C and oil. However, as it is well known how of the vitamin is required by fish, it would have been obvious to use the right amount to coat a feed, and to coat to a particular depth since coating of the feed with the particular composition is known.

The limitations of claims 5, 9 and 10, 11 have been disclosed above and are obvious for those reasons.

Fish oils are disclosed by Todd as in claim 6 (col. 16, lines 65-70). It would have been within the skill of the ordinary worker to use particular amounts of nutrients such as oil, especially as coating the composition with an oil containing material has been

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shown. Therefore, it would have been obvious to use particular amounts of a known nutrient for its known function.

Claim 7 further requires a particular amount of water in a solid feed and claim 8 that the feed is in a particular shape and has a particular diameter. Todd discloses the use of pelleted trout food, which is seen to be globular in shape. Even if the pellets are not globular, nothing new is seen in making an extruded product a particular shape in a particular diameter, absent anything new or unobvious. Certainly, it is known what size of fish feed trout and salmon prefer. Therefore, it would have been obvious to make the feed in particular sizes and shapes.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Keith Hendricks, can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should


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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 8-10-07


HELEN PRATT
PRIMARY EXAMINER